

Delaware Justice Reinvestment Task Force Meeting

Minutes For January 23rd, 2012

The Delaware Justice Reinvestment Task Force met at 2PM on Monday January 23rd, 2012 at Buena Vista Conference Center. Task Force Chair Lt. Governor Matt Denn opened the meeting at 2PM. Task Force members in attendance included: Jay Lynch representing I-Adapt, Chief Judge Alex Smalls of the Court of Common Pleas, Lisa Borin Ogden of VCAP, Major Nate McQueen representing the Delaware State Police, Chief Deputy Attorney General Charles Butler of the Department of Justice, Public Defender Brendan O'Neill, Justice Carolyn Berger representing the Supreme Court, Commissioner Carl Danberg of the Department of Correction, President Judge James Vaughn Jr. representing Superior Court, State Senator Patricia Blevins, R.L. Hughes representing the Department of Safety and Homeland Security, and State Senator Liane Sorenson. Also attending were consultants Julie James, Dr. Suzi Agha, and Ram Subramanian, all of the Vera Institute of Justice, Drew Fennell, Executive Director of the Criminal Justice Council, Chris Kervick of CJC, Valarie Tickle of CJC, Maureen Monagle of CJC, Chuck Pugh of CJC, Mike Barlow of the Governor's Office, Tom MacLeish of SAC/CJC, Philisa Weidlein-Crist of SAC/CJC, Charles Huenke of SAC/CJC, Raina Allen of the Lt. Governor's Office, Chad Robinson of the Lt. Governor's Office, Jeff Mordock of the Delaware Law Weekly, Jissell Martinez of the Office of Management and Budget, Joanna Champney of the Delaware Center for Justice, Angie White Walker of the Delaware Center for Justice, Charles Madden of the Hope Commission, Peggy Bell of DELJIS, Gail Riblett of TASC, Pam Price of the State House of Representatives and Johnnette Graf of the Parole Board. Members of the public included Richard Davidson, Mary Faith Welch, Ken Dryden, and Syl Woolford. The meeting was staffed by Ron Keen.

After the meeting was opened the Minutes from the December 19th Task Force meeting were approved.

Julie James opened the presentation by summarizing Vera's Level IV findings which were:

- Important offender needs are not addressed.
- Programs and conditions of supervision are not individualized to offenders' needs
- Program effectiveness is unknown
- Program implementation is inconsistent

Next Julie James summarized Vera's Level V findings which were:

- Lack of programming
- Inadequate information on offender needs
- Need to know more about program effectiveness

After the presentation of Vera's Level IV and Level V findings, Julie James presented Vera's Proposals to Improve Outcomes for Level IV and V. The proposals included:

- Assess risk of reoffending and needs upon prison intake.
- Develop case plans based on inmates' criminogenic needs.
- Evaluate programs and fund successful ones.
- Expand program capacity to meet inmates' needs.

In the discussion that followed Commissioner Danberg advised that the LSI-R Short Version is completed on all inmates who are sentenced to a year or more of incarceration.

Julie James said that the intent of specific risk assessment instruments vary according to the point of the criminal justice process at which they are administered.

Chief Deputy Attorney General Butler added that the sooner the instruments are used, the more helpful the information that is learned.

Lt. Governor Denn asked that the Vera Institute prioritize the recommendations.

Julie James replied that Vera would provide feasibility analysis for all of the recommendations by the February meeting.

Next, Dr. Suzi Agha provided a Quantitative Data Analysis Update. She began the presentation with a revised description of the number of admissions, releases and the size of the stock population for the probation, Level IV and Level V populations. She noted that the number of releases was somewhat lower than in the original slide, because it was based on new data provided by DOC. Next she presented a breakdown of the 2010 admissions to Probation, Level IV, and Level V by lead charge. For probation, the admissions were Misdemeanor 46%, Felony 23%, Felony VOP 10% and data missing 21%. For Level IV the admissions were Felony 34%, Felony VOP 34%, Misdemeanor 11%, and data missing 21%. For Level V the admissions were Misdemeanor 29%, Felony 26%, Felony VOP 23% and data missing 22%. Dr. Agha added that the analysis of the data had indicated that VOPs had been presented previously as misdemeanors, but they should be shown as felonies. She also reported that the missing data is due to DOC and DELJIS data not being perfectly matched and that DELJIS does not receive DOC admission data from Family Court. Peggy Bell of DELJIS advised that DELJIS receives criminal justice commitment data from Family Court, but not civil data.

Next, Dr. Agha presented analysis of 2010 data on admissions to Probation, Level IV, and Level V, ***by length of sentence***. She noted that because of the missing data among other issues, this analysis is preliminary and subject to revision.

- For admissions to Probation where the lead charge was Violation of Probation, the average sentence was 367 days. For a Felony lead charge, it was 397 days, and for a Misdemeanor, it was 327 days.
- For admissions to Level IV, for VOP the average was 234 days, for a Felony lead charge, it was 536 days, and for a Misdemeanor, it was 157 days.
- For admissions to Level V, for a Violation of Probation, the average sentence was 230 days, for a Felony it was 585 days, and for a Misdemeanor it was 117 days.

Dr. Agha advised the Task Force that the data do not distinguish suspended sentences. As an example, a 10 year sentence, suspended after 2 years is counted as a 10 year sentence.

Dr. Agha then provided the ***average sentence length for the top 5 lead charge types for 2010 admissions***. They ranged from a high of 399 days for Felony drug charges to 333 days for Misdemeanor drug charges. For Level IV the 3 most frequent lead

charges and their average length of sentence were Felony drug charge 642 days, Obstruction 231 days, and Misdemeanor drug charge 167 days. For Level V the top three length of stay of the 5 most frequent lead charges were Felony drug 608 days, Assault 227 days, and Traffic 215 days.

Next, Dr. Agha presented data on the *average length of stay by lead charge category for 2010 releases*.

- For 2010 releases from **Probation** with a lead charge of Violation of Probation the average length of stay was 432 days, for a Felony lead charge it was 379 days, and for a Misdemeanor lead charge it was 353 days.
- For releases from **Level IV** the average length of stay for a Violation of Probation lead charge was 96 days, for a Felony lead charge it was 87 days, and for a Misdemeanor lead charge, it was 57 days.
- For releases from **Level V** the average length of stay for a Violation of Probation lead charge, the average length of stay was 128 days, for a Felony lead charge, it was 334 days, and for a Misdemeanor lead charge it was 25 days.

Dr. Agha provided data analysis of 2010 releases on *average length of stay on probation for the 5 most frequent lead charge types*. They ranged from 415 days for Obstruction to 329 days for Misdemeanor drugs. For length of stay at Level IV the average was 62 days for a Misdemeanor lead charge, 97 days for a Felony, and 93 days for Obstruction. For Level V admissions of the 5 most frequent lead charge types the highest length of stay was for Felony drug charges, 336 days, and the shortest average length of stay was for Misdemeanor drug charge 43 days.

Next was an analysis of *supervision or bed days by lead charge type*. For probation the lead charge type was missing for 20% of the supervision days. The total for Traffic, Obstruction, Drugs, and Assault accounted for 54% of the supervision days. For Level IV Drugs and Obstruction as a lead charge accounted for 50% of the bed days while the lead charge data was missing for almost 20% of the bed days. For Level V Sex Offenses, Robbery, and Obstruction accounted for 30% of bed days. Drugs as a lead charge accounted for 18% and the data was missing in another 18%. Senator Blevins asked for data on what conditions of probation are violated. Dr. Agha advised that that data was not available. She added that data regarding successful terms of probation is available in aggregate form.

Next Julie James presented proposals to reduce Length of Stay. The proposals are:

1. Implement special early release plan.
2. Increase good time credits.
3. Create program completion credits.
4. Implement earned compliance credits.
5. Eliminate conditional release.
6. Cap VOP revocation sentences.
7. Explore evidence-based sentencing.

Regarding proposal 1, it was noted that sentence modification is legally possible under Title 11 Section 4217. It was also noted that SENTAC had conducted a review of inmate cases under 4217 in the past and that a number of offenders had been released. SENTAC has the authority to conduct reviews again if it decides to. Commissioner Danberg advised that every inmate is on a schedule every 2-3 years for a 4217 review. He indicated that DOC recommends about a dozen inmates annually under 4217 for early

release. Lt. Governor Denn indicated that he was skeptical of the 4217 effort, that he was concerned about the returnees to Level V. Commissioner Danberg replied that there isn't an error free method of determining who would be released. Public Defender O'Neill offered the suggestion to expand the window when inmates can file a motion to modify a sentence. He further suggested opening 4217 up to an inmate's counsel of record. Commissioner Danberg replied that if the defense was responsible for putting together the inmate's 4217 packet that he was ok with the Public Defender's suggestion. Chief Deputy Attorney General Butler indicated that all inmate release decisions should have judicial oversight and that they should be included on a court docket. Lt. Governor Denn indicated that he was concerned about the 10% return to prison rate reported in the analysis of the previous 4217 effort. He added that any subsequent effort should be more refined so that the return to prison rate could be better than 10%.

Proposals 2, 3, and 4 were discussed next. Commissioner Danberg indicated that good time behavior credits are limited by statute. He added that increasing DOC's flexibility to provide incentives to inmates for good behavior and program participation or completion would give DOC a more effective tool to manage the population. Chief Judge Smalls said that there should be a process in place that if an inmate completes a program while in prison there should be a reward. Senator Blevins added that completion credits should be for beneficial programs. Commissioner Danberg indicated that he would like to see good time available to inmates increased. He added that Delaware is at the low end among the states for available good time. He also indicated that behavioral good time is important because prisons are dependent on inmate compliance. He added that if certain classes of inmates were excluded from increases in good time, he would rather not see it because it would be too complex to implement. Lisa Borin-Ogden suggested that class or program credits are worthwhile but that good time credits by themselves are more problematic.

Justice Berger indicated that she was concerned about "capping" VOP revocation sentences. President Judge Vaughn added that he would not want to see VOP sentences "capped". Justice Berger said that guidelines for VOP sentences would not be problematic, however.

Chief Judge Smalls asked for some clarification on #7. Julie James replied that evidence-based practice means more information at sentencing such as Risk and Needs Assessments and Pre-Sentence investigations. Chief Deputy Attorney General Butler raised the question of whether the Task Force was going to support the implementation of a Risk Assessment Instrument for offenders at the sentencing stage. Commissioner Danberg added that #7 would have the greatest impact but also that it would be the hardest to implement. President Judge Vaughn said that expanding completion of Pre-Sentence investigations would require the cooperation of the Public Defender and the Department of Justice. Public Defender added that an advantage of the current "plea system" is the relative certainty of the offender's sentence. He also added that in the "courthouse marketplace" offenses has a "going rate."

Lt. Governor Denn expressed concerns with recommendations 2 through 6. His concerns focus on early releases without regard for individual situations. He added that it is a public safety issue. He asked if there would be more recommendations at the next meeting. Julie James replied that this is the universe of recommendations related to DOC populations. Jay Lynch added that recommendations are needed related to effective

programming for offenders. R.L. Hughes indicated that an individualized assessment tool is needed. Lt. Governor Denn requested more specifics at the February meeting. Julie James replied that the next meeting will include a presentation by Jim Austin detailing the potential impact of adopting or not adopting specific recommendations.

Senator Sorenson asked if DOC's admissions track offender zip codes. Commissioner Danberg replied that the Criminal Justice Council had completed the last study of zip code data. He added that nothing had been done with the data provided by the study.

Senator Sorenson expressed concern about the racial disparity in Delaware's prisons, as noted in Ken Dryden's public comment from the last task force meeting. Commissioner Danberg indicated that there is a report on race completed by the Statistical Analysis Center on the CJC website. Drew Fennell added that the Racial Justice Improvement Project is looking at the racial impact of violations of probation.

Public Comment:
None offered.